

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)	
On Its Own Motion)	
)	ICC Docket No. 13-0506
)	(On Rehearing)
Investigation of Applicability of)	
Section 16-122 and 16-108.6 of the)	
Public Utilities Act)	

**STATEMENT OF POSITION ON REHEARING
OF THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("AG" or "the People"), hereby file their Statement of Position on Rehearing in the above-entitled docket. This rehearing was initiated in response to the March 20, 2014 order of the Illinois Commerce Commission ("Commission") granting in part an Application for Rehearing filed by Commonwealth Edison ("ComEd").

The purpose of this rehearing is to address the Commission's interpretation of Section 16-122 and whether its language permits the release of anonymous customer usage data to third parties not specifically mentioned in the statute. While the People believe that Section 16-122 cannot be interpreted to apply to entities or information not specifically mentioned therein, we also believe that the data protocol adopted by the Commission avoids the problem that statute was designed to address by designating only aggregated, anonymous data as generally available to third parties. The Commission's data protocol addresses the issue of third party access or commercialization of customer usage information by parties not subject to the Commission's jurisdiction or not otherwise designated by the General Assembly as an appropriate recipient of such information in a manner consistent with the legislature's intention to protect customer privacy under

Section 16-122. The People believe that the data protocol adopted by the Commission in its January 28, 2014 order may enable the dissemination of customer usage information to third parties while at the same time advancing the public's interest in protecting consumer privacy.

Background

The People filed their Verified Initial Comments on Rehearing on April 22, 2014, and their Verified Reply Comments on Rehearing on May 6, 2014. The sole issue on rehearing, raised by ComEd in its Application for Rehearing, was whether the Commission should revise its ruling concerning the applicability of Section 16-122 of the Public Utilities Act. 220 ILCS 5/16-122. ComEd alleged that the Commission's Order "incorrectly interprets the language of 16-122 by finding that it does not allow the utility to release anonymous customer usage data except to a service provider," specifically an ARES or municipal aggregator, without specific customer consent, as provided for in that Section. ComEd App. at 3.

Section 16-122 of the Public Utilities Act provides:

- (a) Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.
- (b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided how-ever, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.
- (c) Upon request from a unit of local government and payment of a reasonable fee, an electric utility shall make available information concerning the usage, load shape curves, and other characteristics of customers by customer classification and location within the boundaries of

the unit of local government, however, no customer specific billing, usage, or load shape data shall be provided under this subsection unless authorization to provide that information is provided by the customer. (d) All such customer information shall be made available in a timely fashion in an electronic format, if available.
220 ILCS 5/16-122.

In support of this position, ComEd reminded the Commission that its earlier interpretations of Section 16-122 have allowed the Company to release such information absent customer consent in other contexts. Therefore, the Company reasons, the Commission's position in the Order in this proceeding contradicts previous interpretations. ComEd's interpretation of Section 16-122 relies upon the fact that the Commission has sanctioned the collection and even the public release of anonymized customer usage data in certain circumstances to challenge the view that the legislature has limited distribution of such information to an "exclusive list" of data recipients.

ComEd's supported its argument by citing various instances in which the company has collected customer usage information and distributed it to other parties without specific customer consent. Specifically, ComEd referred to its Energy Usage Data System ("EUDS"), in which the company provides generic or aggregated usage data to building owners and managers as part of its 3-year energy efficiency plan, noting that neither building managers nor building owners are listed as recipients of such information in Section 16-122. ComEd App. at 5. Similarly, it cited the Commission's approval of ComEd's Advanced Metering Infrastructure ("AMI") plan in Docket No. 12-0298, which required the utility to track a variety of metrics and include them in their annual AMI implementation update. ComEd App. at 5. Those metrics included a broad range of customer data: the net load of net metering customers, the peak load reduction of dynamic pricing customers, the amount and location of distributed generation, the load

factor of customers served by AMI meters. ComEd App. at 5-6. "Much of the information," ComEd pointed out, "is not listed in Section 16-122, and it is made available to many parties who are neither RESs nor municipalities." ComEd App. at 6. Finally, the Company cited the administrative law judge's directive in ComEd's recent rate design case, Docket No. 13-0387, that the Company make available to the parties anonymous customer information for analysis in that proceeding, over protests from ICC Staff that Section 16-122 prohibited the release of such information to parties other than ARES or municipalities, absent customer consent.

Applicability of Section 16-122

Section 16-122, which was enacted long before the implementation of smart grid technologies by Illinois utilities, does not govern the examples cited by the Company. In those examples, the Commission authorized the public release of aggregated, anonymized customer usage information collected since the enactment and amendment of Section 16-122 in order to comply with specific statutory or legal requirements. The authorized public release or disclosure of information made pursuant to law or in a supervised regulatory proceeding does not by definition loosen the General Assembly's limitation on the circumstances under which a utility can disseminate customer-specific usage information. That provision was written to ensure that customer privacy interests will be protected in those instances in which a RES or a municipal aggregator seeks usage information in its role as a service provider to its customers. Although the Commission has approved the public release of aggregated information in connection with a utility's compliance with the law, as in the examples cited by ComEd, Illinois law is silent on the topic of whether parties other than service providers are *entitled* to obtain customer usage

information, in whatever form.

The regulatory scheme governing the issue of utility customer usage information consists of provisions in the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/11 *et seq.*, the Public Utilities Act 220 ILCS 511-101 *et seq.* and the Personal Information Protection Act, 815 ILCS 530/11, *et seq.* Section 2HH of the Consumer Fraud Act broadly provides that "[A]ll personal information relating to the subscriber of generation, transmission, distribution, metering or billing of electric service shall be maintained by the service providers solely for the purpose of generating the bill for such services, and shall not be divulged to any other persons with the exception of credit bureaus, collection agencies, and persons licensed to market electric service in the State of Illinois, without the written consent of the subscriber." 815 ILCS 505/2HH. The Public Utilities Act, which more specifically governs the issue of customer information related to utility service, establishes how and under what limited circumstances alternative retail electric suppliers (arguably qualified as "persons licensed to market electric service in the State of Illinois") and municipal aggregators may obtain utility customer information and specifically limits the types of information those entities may obtain from utility companies. 220 ILCS 5/16-122. Finally, the Personal Information Protection Act describes the obligations of any entity defined as a "data collector" - which may include "publicly held corporations" such as utility companies - when "personal information" is acquired by third parties through unauthorized acquisition of computerized data "that compromises the security, confidentiality, or integrity of the security of the system data". 815 ILCS 530/5, 815 ILCS 530/10. In every instance the statutes address the need to protect customer privacy whenever personal information is

collected. Hence the regulatory scheme governing customer information is premised on the need to protect consumer information, not release it, and with specific narrow exceptions made for its limited release.

The People do not agree with the view that challenges the explicit parameters of Section 16-122, characterizing the statute as a “non-exclusive” listing of situations in which the electric utility must make certain data available to certain parties or the view that the statute must be interpreted as a non-exclusive list of situations where data may be exchanged. Well-established rules of statutory construction dictate that words cannot be read into a statute. The primary goal of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intention of the legislature. *Jackson v. Bd. of Election Comm'rs of City of Chic.*, 2012 IL 111928, 1148 (2012). The best indication of legislative intent is the language used in the statute itself. *Id.* When statutory language is clear, statutes must be applied "as written without resort to other tools of construction." *Jackson v. Bd. of Election Comm'rs of City of Chic.*, 2012 IL 111928 (2012) (citing *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill.2d 200, 216-17 (2008)). There is no reason to believe that the General Assembly's intent in passing Section 16-122 was to passively authorize any requests for customer information *not mentioned* in the statute. Such a reading turns rules of statutory construction on their head by treating the statute's limitations on release as exceptions to some unwritten law requiring utilities to release this information to anyone who requests it. In fact, the statutory scheme set forth in the Consumer Fraud and Deceptive Business Practices Act and in the Public Utilities Act regarding customer usage and billing information is premised not on the general availability of this data, but on the need to protect such

customer privacy interests in such information from general dissemination and to release it without customer consent only under certain conditions.

Nor do the People agree that the absence in the law of specific references to particular types of information leaves to the utilities' discretion the dissemination of any customer-related information not specifically referenced therein. Section 16-122 is not a blank check written to the utilities with respect to the distribution of personal information in instances other than those specified in that law. For example, customer addresses fall into the category of information protected from general dissemination by the Consumer Fraud Act and are specifically enumerated in Section 16-108.6(d) of the Public Utilities Act as "personal information" that utilities must protect on behalf of their customers. *See* 815 ILCS 505/2HH and 220 ILCS 5/16-108.6(d). The People also disagree with assertions that the aggregation process imposes unreasonable burdens on third parties. These restrictions are the result of the statutory language itself, and opposition to such limitations should be addressed through the legislative process. Until such laws are passed, the Commission is not in the position to authorize the release of information as personal as a customer's address without specific customer consent.

The People recognize that neither Section 16-122 nor Section 16-108.6 of the Public Utilities Act addresses how the Commission or utilities should handle the large amounts of usage information that may be generated by AMI, or which AMI-generated information may be available to third parties and under what conditions. But both provisions are premised on the protection of individual customer privacy interests. The data protocol adopted by the Commission in this proceeding insures that customer-specific information is not released to third parties in any context. Data that is

anonymized and aggregated is not customer-specific and does not pose risks to customer privacy that are the subject of Section 16-122, nor does it violate the requirement contained in Section 16-108.6 that advanced infrastructure implementation respect customer privacy interests.

The People believe that the examples that ComEd cites to justify a broader reading of Section 16-122 may not be used to re-interpret that provision, but are inapposite to the issue at hand. In the instances described by ComEd, the Company is collecting and reporting on consumption factors or supplying information in a regulated proceeding under Commission oversight in order to fulfill specific requirements it must meet to provide service in compliance with the Public Utilities Act. By limiting the release of usage information not need to fulfill statutory or legal requirements to a format that cuts the link between specific customers and their usage data, the People believe that the Commission has fashioned a solution to reflect policy considerations that have arisen subsequent to the General Assembly's implicit restriction of other uses of such information, while still respecting the concerns that the General Assembly reflected in its passage of Section 16-122.

In summary, the People believe that nothing in the Public Utilities Act precludes the dissemination of customer usage data, *provided* that the format of the data eliminates any link between individual customers and their usage data and also eliminates the possibility that any such links could be recreated with reasonable effort, in order to comport with the intent of Sections 16-122 and 16-108.6 of the Act.

Fees to Acquire Customer Usage Data

In analyzing the applicability of Section 16-122 to the dissemination of customer usage data to third parties, the ICC Staff takes the analysis a step further than the other parties and also addresses that portion of Section 16-122 that requires the payment of a “reasonable fee” by retail electric service providers and municipal aggregators in exchange for this data:

The purpose of establishing the anonymous data protocol is to ensure no customer specific information is being released. Any party is therefore eligible to receive non-customer specific usage information from the utility. The establishment of the anonymous data protocol was the item the Commission was asked to rule on in Issue #1 in this Docket. The Commission adopted CUB’s proposed 15/15 Rule for the release of anonymous customer data. No customer-specific billing, usage or load shape data is being provided when requested pursuant to the anonymous data protocol. In other words, Section 16-122 does not prohibit the release of anonymous data. As a result, Staff recommends that the Commission clarify that any party is able to request data pursuant to the anonymous data protocol that the Commission approved in this Docket. In addition, Staff recommends that the Commission strike the language about requesting parties paying a fee for this type of data. As stated above, the data provided pursuant to the anonymous data protocol is not customer-specific billing, usage or load shape data and therefore a fee is not required pursuant to Section 16-122. To be clear, Section 16-122 does not prohibit the utilities from charging a fee for providing anonymous data. However, Section 16-122 does not require such a fee.

Staff Initial Comm. Rehearing at 5.

The People understand Staff to mean that anonymous data is available to any party, whether or not specifically mentioned in Section 16-122, because the Anonymous Data Protocol has stripped the data of its customer-specific nature, thereby removing it from the purview of Section 16-122. As explained above, the People do not disagree with this conclusion.

We take issue, however with the proposal that this type of information be provided to third parties free of charge. As third parties seek this data, utilities may incur

costs to compile requested information in accordance with the Commission-approved anonymous data protocol. Although the payment of a reasonable fee to obtain the type of information described in Section 16-122 is undoubtedly an integral part of the statute, it does not necessarily follow that there will be no costs associated with usage data compilation and distribution under conditions other than those mentioned in the statute. In the event the utility incurs such costs, they will likely be included in the utilities' general operating expenses, presumably to be paid for by the utility's ratepayers. Given that data compiled by utilities and distributed pursuant to the Anonymous Data Protocol may be used in a variety of contexts by third parties, including for commercial purposes unrelated to the provision of basic utility service, it would hardly be fair to ask ratepayers to absorb these costs.

That the General Assembly anticipated the payment of a fee to obtain customer usage information relevant to smart grid development is evident from the language of the Public Utilities Act itself. Section 16-108.6(d) states

In the event a participating utility receives revenues from the sale of information obtained through Smart Grid technology that is not personal information, the participating utility shall use such revenues to offset the revenue requirement.

220 ILCS 5/16-108(d).


The subsection provides that a utility's sale of information obtained through advanced technology, even information that is "not personal information," should not be exploited for commercial purposes to the detriment of ratepayers. It follows that the imposition of a reasonable fee on those seeking the authorized dissemination of such information is consistent with the principle that ratepayers must not be compelled to subsidize third parties' acquisition of any usage data. Indeed, the utilities themselves, in

all likelihood, will not be willing to absorb these costs, nor should they be expected to do so. Only by imposing a reasonable fee to cover any costs of compilation and dissemination will third parties' costs of doing business be properly borne by the third parties themselves.

Accordingly, the People propose that the following language, which ICC Staff recommended be eliminated from the Commission's January 28, 2014 Order at page 17, instead be retained and slightly modified:

Further, any party requesting aggregated, anonymous data is required to pay a reasonable fee, ~~which would surely~~ to defray any additional costs incurred to compile and distribute the data in accordance with the provisions of this Order, and in a manner consistent with the protection of consumer privacy interests as set forth in the Public Utilities Act and other relevant Illinois law.

Respectfully submitted,

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